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SERVICE DATE - JULY 16, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-581X

1411 CORPORATION—ABANDONMENT EXEMPTION—IN LANCASTER COUNTY, PA

STB Docket No. AB-529X¹

MIDDLETOWN & HUMMELSTOWN RAILROAD COMPANY—ABANDONMENT
EXEMPTION—IN LANCASTER, PA

IN THE MATTER OF AN OFFER OF FINANCIAL ASSISTANCE

Decided: July 13, 2001

The 1411 Corporation and the Middletown & Hummelstown Railroad Company (collectively Applicants) filed separate verified notices of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon service over the same line of railroad extending from milepost 39.3, in the borough of Columbia, to milepost 37.2, in West Hempfield Township, a distance of approximately 2.5 miles in Lancaster County, PA (line).² Notice of the exemption was served and published in the Federal Register on April 12, 2001 (66 FR 19000). Under 49 CFR 1152.50(d)(3), the exemption was scheduled to become effective on May 12, 2001, but a formal expression of intent to file an offer of financial assistance (OFA) was timely filed by Frank Sahd Salvage Center, Inc. (Sahd). By decision served May 8, 2001, the Board indicated that the filing of the expression of intent had the effect of postponing the effective date of the exemption until May 22, 2001.³

As noted in the Board's May 8, 2001 decision, Sahd had requested Applicants to provide the financial data and information prescribed in 49 CFR 1152.27(a). In accordance with 49 CFR 1152.27(c)(2)(ii)(D), Applicants notified Sahd that they required an additional 60 days to provide Sahd with the requested materials. By decision served May 10, 2001, the Board tolled the time

¹ These proceedings are being handled together for administrative convenience.

² Past agency decisions concerning this line indicated that the line extended from milepost 39.7 to milepost 37.2. The filings addressed in this decision treat the line accordingly as extending from milepost 39.7 to milepost 37.2.

³ See 49 CFR 1152.27(c)(2)(i).

period for Sahd to file an OFA until July 11, 2001, and further postponed the effective date of the exemption until July 21, 2001.⁴ On July 11, 2001, Sahd timely filed an OFA under 49 U.S.C. 10904 and 49 CFR 1152.27(c) to purchase the entire line for \$51,000, which reflects a \$40,000 valuation of the underlying real estate and an \$11,000 valuation of the track, including parallel track and turnouts and excluding any material or work in the crossings. The Applicants' minimum purchase price is \$118,150, which reflects a \$40,000 price for the underlying real estate and \$78,150 for rail, ties, and other track material (OTM), excluding nine turnouts.⁵ See Verified Statement of Ronald George Sahd (V.S. Sahd) Exhibit B.

An OFA to acquire a line for continued rail service need not be detailed, but an offeror must show that it is financially responsible and that the offer is reasonable. See Conrail Abandonments Under NERSA, 365 I.C.C. 472 (1981).

Sahd is a scrap metal processing company that buys ferrous and nonferrous scrap metal, processes it, and resells it to industrial companies for milling and smelting. Sahd has submitted its OFA in order to preserve rail service to its scrap metal processing facility and other shippers located on the line. See V.S. Sahd. Sahd has submitted various financial statements, which indicate that Sahd is financially responsible. See V.S. Sahd, Exhibit I.

Sahd's offer is less than Applicants' minimum total purchase price for the underlying real estate and the rail, ties, and OTM. Consistent with 49 U.S.C. 10904(c) and 49 CFR 1152.27(c)(1)(ii)(C), however, Sahd has explained the basis for the difference between its lower purchase price for the line and Applicants' purchase price for the line. (Sahd accepts the \$40,000

⁴ The May 8, 2001 decision also provided that the request by the Shawnee Run Greenway, Inc. (Shawnee) for issuance of a notice of interim trail use (NITU) and rail banking under the National Trails System Act, 16 U.S.C. 1247(d), and for a public use condition under 49 U.S.C. 10905, would be held in abeyance pending completion of the OFA process. By letter filed June 13, 2001, the United States Department of Interior, National Park Service indicated its support of Shawnee's request for interim trail use and rail banking. By letter filed July 6, 2001, Applicants indicated their willingness to negotiate an agreement with Shawnee in the event there is no sale under the OFA process.

⁵ On July 5, 2001, Shawnee filed a request for an exemption under 49 U.S.C. 10502 from further OFA procedures in this proceeding, and, in the alternative, a notice of its intent to file a motion to dismiss any OFA filed by Sahd. By letters filed July 2, 2001, and July 10, 2001, the Borough of Columbia, a unit of local government within the Commonwealth of Pennsylvania, and Lancaster County, PA, respectively, have indicated their support for Shawnee's request for interim trail use and rail banking and have recommended that the Board exempt the abandonment proceeding from any further OFA proceedings or dismiss any OFA. Sahd's OFA indicated that it would separately respond to Shawnee's July 5 motion on or before July 25, 2001. The Board will address the issues raised by these filings in a subsequent decision.

valuation of the underlying real estate but maintains that the overall price is significantly overstated due to unreliable estimates of the value of the rail assets.)

Because Sahd, a financially responsible entity, has offered financial assistance, the effective date of the exemption authorizing abandonment of the line will be postponed to permit negotiations between Applicants and Sahd.

Any person filing a request to set terms and conditions must pay the requisite filing fee, set forth at 49 CFR 1002.2(f)(26), which currently is \$14,800. An original and 10 copies of the request should be submitted along with the fee, in an envelope bearing the docket number of the proceeding, along with the words "Attention: Application Unit, Request to Set Terms and Conditions" in the lower left hand corner.

Appeals to this decision are governed by 49 CFR 1011.2(a)(7). Any appeal must be filed within 10 days of the service date of this decision and will be heard by the entire Board.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The effective date of the exemption is postponed in order to permit the OFA process under 49 U.S.C. 10904 and 49 CFR 1152.27 to proceed.

2. If Applicants and Sahd cannot agree on a purchase price of the line, either party may request the Board to establish the terms and conditions of the purchase price on or before August 10, 2001. If no agreement is reached and no request is submitted by that date, the Board will serve a decision vacating this decision and allowing the abandonment exemption to become effective.

3. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary